



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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APPLICATION FOR CERTIFICATION FOR THE
CALICO SOLAR PROJECT AMENDMENT

DOCKET No. 08-AFC-13C

COMMITTEE ORDER RESPONDING TO PATRICK JACKSON'S MOTION TO COMPEL PRODUCTION OF INFORMATION

I. SUMMARY

On June 17, 2011, Intervenor Patrick Jackson filed a *Motion to Compel Production of Information* for Calico Solar, LLC (Applicant) to produce information responsive to Data Requests 1, 3, 4, 5, 9, 12(b) of *Patrick C. Jackson Data Request Set 1 (Nos. 1-13)*. Neither party requested that the Committee conduct public hearings on Mr. Jackson's motion.

II. DISCUSSION

Energy Commission Regulation 1716 contains the basic framework for information exchanges (i.e., data requests and responses) for licensing proceedings. The procedure is straightforward. A party may request from an applicant "... information reasonably available to the applicant which is relevant to the ... application proceedings or reasonably necessary to make any decision on the ... application." (Cal. Code Regs., tit. 20 § 1716, subd. (b).) An applicant may then answer or object to the request. If an applicant objects, the requesting party may then forego the request, seek alternative means of obtaining the desired information, or petition for an Order directing an applicant to provide the information.

The Committee assigned to this post-certification amendment proceeding determined that the parties may serve data requests on the Applicant as specified by the Committee's May 2, 2011 Scheduling, Briefing, and Procedures Order. The Order provides in pertinent part:

At the April 20, 2011 Informational Hearing, several parties noted that studies required in the original project's Conditions of Certification have not been completed. The parties' concerns regarding more project information should be addressed through the data request process. The Siting Committee hereby **ORDERS** that data requests may be propounded only upon Calico Solar, LLC and any such requests may be propounded only after the Committee issues written findings of good cause.

The Committee, in its discretion, may limit the number of allowed data requests, scope of the data requests, and time allocated for responding to data requests. All approved data requests shall be served by no later than 5:00 p.m. on May 31, 2011.

(May 2, 2011 Order, p. 3, original emphasis.)

In accordance with this directive, Mr. Jackson submitted 23 proposed data requests for Committee review. The Committee determined that Mr. Jackson established good cause to propound 13 requests, all of which are in *Patrick C. Jackson Data Request Set 1 (Nos. 1-13)*. Mr. Jackson served the data request on the Applicant on or about May 16, 2011.

In considering the motion, we considered all information provided by the parties to date including but not limited to the Petition to Amend, Commission Staff's data requests served on the Applicant on April 15, 2011, the Applicant's June 6 and June 15, 2011 letters to Craig Hoffman and Patrick C. Jackson, and Exhibit 1 to the Applicant's June 21, 2011 Memorandum to the Committee regarding the June 23, 2011 Mandatory Status Conference.

III. COMMITTEE RULING

1. SOIL AND WATER RESOURCES

Data Request 1: Please provide the hydrology, hydraulic and sediment transport/scour studies for the Modified Project AND adjacent private properties affected by the studies.

Data Request 3: Please provide revised grading and drainage plans for the Modified Project AND adjacent private properties affected by the revised grading and drainage.

Data Request 4: Please provide letters of authorization from the adjacent property owners modifying drainage onto or off their properties.

Data Request 5: Please provide a revised Drainage, Erosion and Sediment Control Plan (DESCP) for the Modified Project AND adjacent private properties affected by the revised DESCP.

Committee Response: The Committee is informed that Mr. Jackson and the Applicant have conditionally resolved their dispute regarding data requests 1, 3, 4, 5. According to the Applicant:

Calico submitted to the Commission a Scope of Work provided by Tetra Tech, Inc. dated May 28, 2011, regarding Tetra Tech's preparation of an infiltration report, geomorphic and hydraulic analysis, geomorphic and biologic analysis, scour analysis, a pole foundation stability report, and all studies necessary for the DESC. The studies contemplated in the Scope of Work will be completed according to the schedule set forth in Exhibit 1 "Updated Schedule for Outstanding Deliverables" of Calico's Issue Statement in Response to the Status Conference, docketed June 23, 2011. At the Commission Workshop on June 28, 2011, Mr. Jackson agreed that so long as the studies, reports and grading plans are completed consistent with Tetra Tech's Scope of Work, the studies, reports and grading plans would satisfy his Data Requests 1,3, 4, and 5. Accordingly, Calico understands that Mr. Jackson's concerns regarding Calico's responses to date Requests 1, 3, 4, and 5 have been fully addressed and that no further discussion is needed.

(Applicant's *Response to Motion to Compel Production of Information*, pp. 3-4.) Mr. Jackson has not refuted these claims.

Accordingly, Mr. Jackson's motion as to Data Requests 1, 3, 4, and 5 is **DENIED**. As long as the studies, reports, and grading plans are completed consistent with Tetra Tech's Scope of Work, these documents and the information therein will be deemed to satisfy Data Requests 1,3, 4, and 5. If the documents are not completed consistent with the Scope of Work, Mr. Jackson may resubmit a Motion to Compel Production of Information regarding Data Requests 1, 3, 4, and 5.

Notwithstanding the Committee's ruling, as a general rule the Energy Commission's regulations do not require an applicant to conduct original research or analysis on behalf of, or prepare documents specifically for, an intervenor. Nor do they require that the information provided satisfy all expectations of the requesting party. However, in this proceeding, even before Mr. Jackson served his data requests on the Applicant, Commission Staff requested and the Applicant agreed to provide studies and reports to include:

- Infiltration report, including an analysis for the potential for soil erosion and the increased potential for infiltration along the unimproved module access points.
- Geomorphic and Hydraulic Analysis, including sediment transport studies.
- Geomorphic and Biologic Analysis.
- Scour Analysis.
- Grading and Drainage Plan.
- DESC.

These studies and reports will be completed between July 27 and September 1, 2011. (See http://www.energy.ca.gov/sitingcases/calicosolar/compliance/2011-04-15_CEC_Data_Requests_Set_01.pdf; Exhibit 1 to the Applicant's June 21, 2011 Memorandum to the Committee regarding the June 23, 2011 Mandatory Status Conference.)

2. PUBLIC HEALTH AND SAFETY

Data Request 9: Coccidioides arthroconidia can be dispersed by wind. Please provide the wind data from the Project's meteorological station.

Committee Response: DENIED. CEQA does not require that every conceivable study, research project or test be carried out, or that the analyses be exhaustive. However, if an applicant agrees to conduct a study or is otherwise in possession of data or study results, it is appropriate to require their production. In this case, the request appears to ask for information that is not in the Applicant's possession. The Energy Commission's regulations do not require an applicant to conduct original research or analysis on behalf of, or prepare documents specifically for, an intervenor. Nor do they require that the information provided satisfy all expectations of the requesting party.

Instead of providing the requested data, the Applicant provided Mr. Jackson with surface meteorological data from the closest long-term meteorological station (Barstow Airport National Weather Service Station) to the project site. If Mr. Jackson deems the provided data as insufficient to address perceived project impacts, then he may submit his own data as the proceedings move forward.

Data Request 12(b): Page C.15-18 of the SSA stated in part, "To minimize potential exposure of workers and also the public to coccidioidomycosis during soil excavation and grading, extensive wetting of the soil prior to and during construction activities should be employed and dust masks should be worn at certain times during these activities."

(b) Please describe how and when the adjacent property owners will be provided dust masks and trained to use the masks.

Committee Response: DENIED. The Applicant directly responded to the request for information by stating that it "does not intend to provide dust masks to adjacent property owners. Neither the conditions of certification for the Approved Project nor the conditions of certification for the Modified Project require Calico Solar to provide dust masks to adjacent property owners. WORKER SAFETY-9 requires that *site workers* use dust masks whenever visible dust is present." (Applicant's *Response to Motion to Compel Production of Information*, p. 7.) The Committee confirmed that the December 2010 Final Decision for the Calico Solar Project does not require the project owner to provide dust masks to any members of the public; instead, this obligation is limited to site workers. (Final Decision, pp. 3-4, 23-24.)


However, none of the parties are precluded from producing new evidence in this amendment proceeding, which could not have been introduced during the Calico Solar Project (08-AFC-13) proceeding, showing that feasible mitigation measures are necessary to avoid or reduce project-related impacts to adjacent property owners to less than significant levels.

It is so **ORDERED**.

Dated July 18, 2011, at Sacramento, California.

A handwritten signature in black ink, appearing to read 'K. Douglas', written over a horizontal line.

KAREN DOUGLAS
Commissioner and Presiding Member
Siting Committee

A handwritten signature in black ink, appearing to read 'Robert B. Weisenmiller', written over a horizontal line.

ROBERT B. WEISENMILLER
Chairman and Associate Member
Siting Committee